

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GLENN BURTON, JR.,

Plaintiff,

v.

Case No. 07-C-303

**AMERICAN CYANAMID CO.,
ARMSTRONG CONTAINERS, INC.,
CONAGRA FOODS, INC.,
E.I. DUPONT DE NEMOURS & COMPANY, INC.,
LEAD INDUSTRIES ASSOCIATION, INC.,
MILLENNIUM HOLDINGS, L.L.C.,
N.L. INDUSTRIES, INC.,
ATLANTIC RICHFIELD COMPANY,
SHERWIN-WILLIAMS CO., and
DEPARTMENT OF HEALTH AND FAMILY
SERVICES, STATE OF WISCONSIN,**

Defendants.

ORDER

On March 28, 2007, defendant Atlantic Richfield Company removed this action from state court. In its notice of removal, such defendant asserted that there was complete diversity of citizenship between plaintiff and all properly-joined defendants and that all properly-joined defendants had consented to removal. It noted that there was not diversity of citizenship between plaintiff and defendant Department of Health and Family Services, State of Wisconsin ("DHFS"), but asserted that DHFS had been joined only as a subrogee of plaintiff, and had filed a motion to dismiss disclaiming any interest in the case. Though DHFS filed its motion to dismiss in state court on March 15, 2007, and such motion was filed in federal court on March 28, 2007, plaintiff has not contested such motion. Further, on April 3, 2007, plaintiff filed a consent to removal. As it appears that plaintiff consents to DHFS's

dismissal, I will dismiss DHFS without further discussion and thereby assert subject matter jurisdiction over this action.

Finally, Atlantic Richfield Company noted in its notice of removal that Lead Industries Association ("LIA"), which did not appear in state court and has not appeared in federal court, appears to have been accidentally named in the caption of plaintiff's state court complaint. Indeed, in the body of his complaint, plaintiff did not list LIA as a defendant. The complaint states that LIA promoted and marketed a dangerous product, but also states that "LIA is not a party because it is presently under the protection of the bankruptcy laws in the United States." As such, I agree with Atlantic Richfield Company that LIA appears to have been inadvertently named in the caption of plaintiff's complaint and I will also dismiss it without further discussion. If plaintiff wishes to bring a claim against LIA, plaintiff may file a motion for leave to amend his complaint to add such claim.

THEREFORE, IT IS ORDERED that the motion to dismiss filed by Department of Health and Family Services, State of Wisconsin, is **GRANTED**.

IT IS FURTHER ORDERED that Department of Health and Family Services, State of Wisconsin, is dismissed from this action.

IT IS FURTHER ORDERED that Lead Industries Association, Inc., is dismissed from this action.

Dated at Milwaukee, Wisconsin, this 25th day of April, 2007.

BY THE COURT:

s/Lynn Adelman
LYNN ADELMAN
District Judge